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11 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
12 **SAN FRANCISCO DIVISION**

13 TRADER JOE'S COMPANY, a California
corporation,

14 Plaintiff,

15 v.

16 DESERTCART TRADING FZE, a United
Arab Emirates company, PIFFERT INC., a
17 Delaware corporation, and DOES 1-5,

18 Defendants.
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Case No. 3:23-cv-01148-CRB

**DECLARATION OF DAVID R.
EBERHART IN SUPPORT OF TRADER
JOE'S *EX PARTE* MOTION FOR
PERMISSION TO EFFECT SERVICE OF
PROCESS BY ALTERNATIVE MEANS
AND EXTENSION OF TIME TO SERVE
DEFENDANT DESERTCART TRADING
FZE**

Date: June 16, 2023
Time: 10:00 a.m.
Judge: Hon. Charles R. Breyer

DECLARATION OF DAVID R. EBERHART

I, David R. Eberhart, declare as follows:

1. I am over 18 years of age and make this declaration based upon personal knowledge of facts set forth below except as to those matters stated on information and belief. As to those matters, I am informed and believe them to be true. If called upon to testify, I could and would testify under oath to the matters set forth herein.

2. I am an attorney licensed to practice law under the laws of the State of California and am a partner with the law firm O'Melveny & Myers LLP, attorneys for Plaintiff Trader Joe's Company ("Trader Joe's") in this matter. This declaration is filed in support of Trader Joe's Motion to Serve Defendant DesertCart Trading FZE ("DesertCart") by Alternative Means, filed contemporaneously with this declaration.

3. On information and belief, DesertCart operates websites at <https://www.desertcart.ae/>; <https://www.ar-aedesertcart.com/>; <https://www.desertcart.co/>; and <https://www.desertcart.sc/>. These websites are substantially identical to DesertCart's website at <https://www.desertcart.us/>.

4. DesertCart offers on its websites to sell and deliver Trader Joe's products. For example, a true and correct copy of a web printout of the search results for "Trader Joe's" on DesertCart's <https://www.desertcart.ae/> website is attached hereto as Exhibit A.

5. Trader Joe's does not authorize DesertCart, or any third party, to sell online or deliver Trader Joe's products.

6. DesertCart's websites do not identify a physical contact address. Instead, they direct users to contact DesertCart by email at support@desertcart.com, by phone, or by live chat. A true and correct copy of a printout of the "About DesertCart – Customer Support" webpage from <https://www.desertcart.us/> is attached hereto as Exhibit B.

7. Whois domain registration records for the domain <https://www.desertcart.us/> show that the domain is registered to Rahul Swaminathan. A true and correct copy of a printout of

1 the Whois domain registration records for <<https://www.desertcart.us/>> is attached hereto as
2 Exhibit C.

3 8. On or around July 18, 2022, and August 22, 2022, at my direction, my colleagues
4 at O'Melveny sent cease and desist letters to DesertCart via email at the email address
5 support@desertcart.com, demanding DesertCart stop its unlawful activities. DesertCart never
6 responded to these emails.

7 9. On December 17, 2022, at my direction, my colleague Maggie Vuong sent a cease
8 and desist letter on my behalf to DesertCart via email at the email address
9 support@desertcart.com. This letter informed DesertCart that Trader Joe's intended to sue
10 DesertCart in this Court and enclosed a draft copy of the Complaint. A true and correct copy of
11 this December 17, 2022, email is attached hereto as Exhibit D at pp. 3-4. A true and correct copy
12 of the cease and desist letter is attached hereto as Exhibit E.

13 10. On December 20, 2022, DesertCart responded from the support@desertcart.com
14 email address. I was copied on this response. DesertCart's response acknowledged Trader Joe's
15 claims of trademark infringement and DesertCart's receipt of Trader Joe's letter enclosing the
16 Complaint. The letter further stated: "We'd like to help you further, please send an email to our
17 legal department for any legitimate legal claims to our legal department at legal@desertcart.com."
18 A true and correct copy of DesertCart's December 20, 2022, response is attached hereto as
19 Exhibit D at pp. 2-3.

20 11. Later on December 20, 2022, at my direction, Maggie Vuong sent the cease and
21 desist letter on my behalf via email to DesertCart at legal@desertcart.com, per DesertCart's
22 instructions. A true and correct copy of this December 20, 2022, email is attached hereto as
23 Exhibit D at pp. 1-2. DesertCart never responded to this email.

24 12. On January 19, 2023, at my direction, my colleague Katie Gosewehr sent another
25 copy of the cease and desist letter on my behalf to DesertCart via email at the email address
26 legal@desertcart.com, and demanded again that DesertCart stop its unlawful activities. A true and
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1 correct copy of this January 19, 2023, email is attached hereto as Exhibit D at p. 1. DesertCart
2 never responded to this email.

3 13. None of the emails sent by my colleagues to support@desertcart.com or
4 legal@desertcart.com resulted in a bounce-back message or other indication that the emails had
5 not been delivered.

6 14. On or around March 10, 2023, at my direction, my colleagues at O'Melveny
7 accessed and downloaded the business information profile for Piffert from the New Hampshire
8 Secretary of State website. A true and correct copy of this business information for Piffert is
9 attached hereto as Exhibit F.

10 15. On March 17, 2023, at my direction, O'Melveny's service of process vendor
11 attempted to serve DesertCart by way of its CEO, Mr. Swaminathan, at 19 Lukens Drive Suite
12 300, New Castle, DE 19720. Service was unsuccessful. According to the process server, the
13 business manager located at this address informed him that Mr. Swaminathan does not live in the
14 state and does not come into the office located at this address. A true and correct copy of the
15 process server's report is attached hereto as Exhibit G.

16 16. On or around March 23, 2023, at my direction, my colleagues at O'Melveny ran
17 investigation reports on Mr. Swaminathan using the investigation services SkopeNow, Accurint,
18 and idiCore. True and correct copies of these SkopeNow, Accurint, and idiCore reports are
19 attached hereto as Exhibits H, I, and J, respectively.

20 17. On March 24, 2023, at my direction, O'Melveny's service of process vendor
21 attempted to serve DesertCart by way of its CEO, Mr. Swaminathan, at: (1) Harvey Mudd
22 College, 301 Platt Blvd, Claremont, CA 91711; (2) 1 Industrial Park Dr Unit 9, Pelham, NH
23 03076; and (3) 340 S Lemon Avenue, Apartment #1038, Walnut, CA 91789. Service attempts on
24 Mr. Swaminathan at these addresses were unsuccessful. A true and correct copy of the process
25 servers' reports for these service attempts is attached hereto as Exhibit K.

26 18. On April 18, 2023, at my direction, O'Melveny retained a private investigator
27 determine Mr. Swaminathan's current address.
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19. On April 21, 2023, the private investigator provided a status report of his investigation of Mr. Swaminathan. A true and correct copy of that April 21, 2023, report is attached hereto as Exhibit L.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and was executed on June 7, 2023 at San Francisco, California.